

FEB-5-2008 05:50P FROM:

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January 28, 2008

VIA E-MAIL

Karen L. Zdanis, Esq.
20 North Broadway, Suite 5
Nyack, New York 10960

Re: Morocho et al. v. Kelly et al., Index No. 07 Civ. 2979

Dear Ms. Zdanis:

I write in response to your letters dated January 16 and January 23, 2008. Be advised that none of the documents requested in your January 16th letter were "improperly withheld" as you claim. In fact, if you review Defendants' Responses and Objections to Plaintiffs' Request for Production of Documents, dated November 30, 2007, and my letter to you dated, December 13, 2007, which discusses the responses, you will see that we: (i) objected to any request seeking information or documents pertaining to anyone who is not a plaintiff in this matter, (ii) objected to any request seeking information or documents beyond the time period during which Freddy Morocho was employed by the car wash, or (iii) advised you that the requested documents do not exist. For all the reasons we have previously discussed with you several times, we will not agree to produce any documents within the first two categories above and, obviously, cannot produce documents within the third category.

Subject to and without waiving the above objections, and incorporating herein by reference the General Responses and General Objections set forth in Defendants' Response to Plaintiffs' Request for Production of Documents, dated November 30, 2007, and any Response provided therein to any similar/duplicative request made in your January 16th letter, Defendants respond to the specific requests in your letter, dated January 16, 2008, as follows:

1. Defendants are not aware of the existence of any responsive documents contained on the hard drive.
2. Defendants are not aware of the existence of any responsive documents.
3. Defendants are not aware of the existence of any responsive documents.
4. Defendants are not aware of the existence of any responsive documents.
5. Defendants are not aware of the existence of any responsive documents.

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6. Defendants are not aware of the existence of any responsive documents.
7. Defendants are not aware of the existence of any responsive documents.
8. Defendants are not aware of the existence of any responsive documents

Very truly yours,

Louis R. Satriale, Jr.

EXHIBIT A

34

1

G. KELLY

2 Q And it's the same machine that's been
3 there the whole time?

4 A Yes.

5 Q Now, you say you enter the hours data
6 onto a spreadsheet, what program do you use?

7 A I think it's Excel.

8 Q And then what happens after you enter
9 it into the spreadsheet?

10 A After I enter in the times in the
11 time sheet, into the spreadsheet, yeah, it
12 gives me a total of what I owe the guys who
13 worked.

14 Q For the preceding week?

15 A Uh, huh. Yes.

16 Q Now, the ten employees that you
17 mentioned, can you describe for me how they are
18 paid? That is by the hour or by the week?

19 A By the week.

20 Q They get a flat rate?

21 A No, by the hour.

22 Q By the hour?

23 A Yes.

24 Q All ten of them?

25 A Yes.

MOROCHO VS KELLY

1/15/08

GEORGE KELLY

| | |
|--|--|
| <p>25 G. KELLY</p> <p>2 A Ordering parts, make sure everything 3 runs smoothly, managing people who work.</p> <p>4 Q What does that entail?</p> <p>5 A Making sure everybody's in the spot 6 they are supposed to be working. That's about 7 it. I do the books, checks and bills. I'm 8 mostly office work.</p> <p>9 Q You hire employees?</p> <p>10 A I have.</p> <p>11 Q Do you decide how much they get paid?</p> <p>12 A Yes.</p> <p>13 Q Who handles the payroll on a week to 14 week basis?</p> <p>15 A I do.</p> <p>16 Q What do you do in that connection, 17 how do you go about handling payroll?</p> <p>18 A I don't understand your question.</p> <p>19 Handling payroll, I don't--</p> <p>20 Q What do you do in connection with 21 payroll, in detail?</p> <p>22 A I put hours together, and then I pay 23 them.</p> <p>24 Q When you say put the hours together, 25 what do you mean?</p> | <p>27 G. KELLY</p> <p>1 A It's been there before I came to the 3 car wash.</p> <p>4 Q Now, how do you go about checking the 5 hours that have been entered into the clock?</p> <p>6 A On Monday I will print out the hours.</p> <p>7 Q How do you do that?</p> <p>8 A How do I do it? I just hit print and 9 it prints out all the days with the workers.</p> <p>10 Q You say-- where do you hit print?</p> <p>11 A On the time clock, itself.</p> <p>12 Q There is a button that says print?</p> <p>13 A Let me just think how to do it again. 14 Yes, well, it says print, yes or no, and you 15 hit yes and it prints out the sheet.</p> <p>16 Q Is there a digital display on the 17 machine?</p> <p>18 A Yes.</p> <p>19 Q And there is a touch screen?</p> <p>20 A Touch screen, and I push in a code 21 and then I put in a date and then I hit print 22 and it prints it.</p> <p>23 Q What code is it that you put in?</p> <p>24 A I don't understand-- my code.</p> <p>25 Q You say you put in a code, what code</p> |
| <p>26 G. KELLY</p> <p>1 A I collect their hours and get the 3 hours and then I pay them to what their hours 4 that are worked.</p> <p>5 Q Now, when you say you collect hours, 6 how do you go about collecting hours?</p> <p>7 A There's a punch-in clock.</p> <p>8 Q Each employee has a time card?</p> <p>9 A No, they have a number and they push 10 it in the time card and they type in or out, if 11 they are coming in or they are going out.</p> <p>12 Q So every day an employee comes in, he 13 goes to the clock, puts in his number and 14 punches in?</p> <p>15 A That's correct.</p> <p>16 Q And then when he leaves he goes to 17 the clock puts in his number and punches out?</p> <p>18 A Correct.</p> <p>19 Q How many employees work at the car 20 wash now?</p> <p>21 A Currently there's eight.</p> <p>22 Q In addition to you?</p> <p>23 A I'm sorry, there's ten right now.</p> <p>24 Q How long have you had this clock that 25 works in the fashion that you just described?</p> | <p>28 G. KELLY</p> <p>1 A I don't know.</p> <p>3 Q Do you know if it has a hard drive on 4 it?</p> <p>5 A I don't know.</p> <p>6 Q Does the machine have a name?</p> <p>7 A Time Banc.</p> <p>8 Q That's the name of the machine or the 9 manufacturer or both?</p> <p>10 A That's the name of the machine, 11 that's on the machine.</p> <p>12 Q It says Time Banc?</p> <p>13 A Time Banc.</p> <p>14 Q Do you know who makes the machine?</p> <p>15 A No.</p> <p>16 Q Did you ever have to get maintenance 17 on the machine?</p> <p>18 A No.</p> <p>19 Q Did you have to get troubleshooting 20 done on the machine?</p> <p>21 A No.</p> <p>22 Q It's worked without any problems in 23 the eight years you've been there, as far as 24 you know?</p> <p>25 A As far as I know.</p> |

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MOROCHO VS KELLY

1/15/08

GEORGE KELLY

1 G. KELLY
 2 whether they have put money in their pocket?
 3 A The computer -- there is a computer,
 4 there is a car wash computer that counts the
 5 cars.
 6 Q What computer is that?
 7 A It's called a Compuwash Computer.
 8 Q C O M P U computer. And does that
 9 have a hard drive?
 10 A I don't understand a hard drive, I'm
 11 not a computer person.
 12 Q Where is it located?
 13 A In the employee office.
 14 Q Do you -- who has access to it?
 15 A To the controls of the computer?
 16 Q Yes.
 17 A Everybody does.
 18 Q Do you have occasion to check the
 19 Compuwash computer to see the cars coming in?
 20 A Yes, every morning.
 21 Q You check every morning for the
 22 previous day?
 23 A Yes.
 24 Q And do you then write down how many
 25 came in on the previous day anywhere?

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1 G. KELLY
 2 Q So after you put on the daily sheet,
 3 you enter into the laptop, the computer in your
 4 office --
 5 A That's correct.
 6 Q (Continuing)-- the number of cars
 7 that came through?
 8 A Yes.
 9 Q What program do you enter into on
 10 your computer?
 11 A I don't know what the program is
 12 called, I'm not a computer person really.
 13 Q Do you know the name of it?
 14 A The computer is a Mac.
 15 Q What do you see on the screen when
 16 you enter it into the -- the number of cars
 17 that came through, what do you see on the
 18 computer screen when you enter it in?
 19 A Just a sheet, computer sheet.
 20 Q What do you enter onto that sheet?
 21 A What the Compuwash computer gave me.
 22 Q Which includes?
 23 A How many cars washed that day, how
 24 many employees washed their cars that day.
 25 Stuff like that.

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1 G. KELLY
 2 Q But on your computer, if you want to
 3 prepare a report that shows you how many came
 4 in for a week or for a month, could you do
 5 that?
 6 A Yes.
 7 Q How would you do that?
 8 A Hit print.
 9 Q What happens when you hit print?
 10 A It prints out a sheet.
 11 Q Showing what?
 12 A The cars.
 13 Q For what period of time?
 14 A For that month.
 15 Q Okay. Could you do yearly summaries
 16 as well?
 17 A No.
 18 Q Monthly, you just do monthly
 19 summaries?
 20 A Yes.
 21 Q Do you know what, how many washes are
 22 done on a typical month?
 23 A Every month, every day and every
 24 month is different.
 25 Q Can you tell me what it ranges for

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